

### **13-1104B. Duty to inform.**

In treating [his] [her] patient, a doctor is under the duty to communicate to the patient [, or to the patient's representative when the patient is a minor or is incapacitated,] that information which a reasonably prudent patient under similar circumstances would need to know about:

1. the patient's condition; [and]
2. the alternatives for treatment; [and]
3. the inherent and potential hazards of the proposed treatment; [and]
4. the likely result if the condition remains untreated.

The duty to inform does not require a doctor to discuss with [his] [her] patient every risk of proposed treatment no matter how small or remote. [A doctor has no duty to discuss risks which the doctor can reasonably expect to be obvious or known to the patient.]

[There is no duty to inform where reasonably well-qualified doctors, acting under similar circumstances, would reasonably conclude that informing the patient of the [condition] [inherent and potential hazards of the proposed (treatment) (operation)] would seriously endanger the patient's life or health.]

#### **USE NOTES**

This instruction should be given where there is an issue of the doctor's failure to give necessary information to the patient, including cases in which the patient alleges lack of informed consent. Where the patient is a minor or is incapacitated, the bracketed reference to the patient's representative should be included in the first paragraph. Depending on the way(s) in which the information conveyed by the doctor is alleged to be deficient, the appropriate bracketed subparts of the first paragraph should be selected.

The bracketed sentence in the second paragraph should not be used unless the jury could find that the information which the patient contends was not disclosed is information which the patient already knew or is a matter of common understanding.

The bracketed third paragraph is given only where the defendant contends and the jury could find that disclosure of a risk to the patient would endanger the patient's life or health.

Where the claim is lack of informed consent, UJI 13-1104A NMRA is to be given with this instruction.

[UJI 13-1104A SCRA 1986; as amended, effective January 1, 1987; November 1, 1991; as recompiled and amended effective August 15, 1997; February 24, 1998.]